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10/698,871

10/31/2003

Mannie Lee Clapp

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08/24/2007

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EXAMINER

HARDEE, JOHN R

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/698,871
Filing Date: October 31, 2003
Appellant(s): CLAPP ET AL.

Bridget Murray
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 31, 2007 appealing from the Office action mailed December 29, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 7-9 and 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 925,776. The reference discloses polymers which can be complexed with perfume ingredients and formulated into laundry products (abstract, [0011]). Methacrylic acid is a preferred comonomer [0015], and it may be copolymerized with such nonionic monomers as those disclosed at [0016]. Such polymers would correspond to appellant's elected polymer. Note also [0017], which discloses that quaternized alkyl ammonium (meth)acrylates, which are cationic monomers, may be used as homopolymers or as copolymers with the monomers disclosed at [0015] and [0016]. It is preferred that the perfume not be covalently bonded to the polymer [0020]. While Kovats Indexes, RFs and ClogPs are not disclosed in the reference, perfume ingredients which are disclosed as suitable by appellant, including citronellol, geraniol and phenylethyl alcohol are disclosed as useful [0021]. The polymers are crosslinked, implying insolubility in water. No particle size is disclosed, but the examples disclose grinding of the polymers, so modification of the particle size is obvious. Loading of the polymer to about 10% by weight of perfume is disclosed at [0030]. Using a cationic polymer in conjunction with an anionic polymer is not specifically disclosed, but it is prima facie obvious to combine two compositions, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi* 169 USPQ 423. When ingredients are well known and combined for their known properties, the combination is obvious absent

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unexpected results. *In re Crocket*, 126 USPQ 186 and *In re Pinten*, 173 USPQ 801. The person of ordinary skill in the surfactant art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results. This reference differs from the claimed subject matter in that it does not disclose a combination of polymers or a composition which reads on appellant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that cationic copolymers and anionic copolymers are each useful for formulation into a surfactant composition. Accordingly, both anionic copolymers and cationic copolymers could be used in the same formulation in the absence of any evidence of unexpected results. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

• **(10) Response to Argument**

Appellant argues that the claimed composition comprises a personal care adjunct ingredient, a water insoluble perfume polymeric particle and a cationic deposition particle aggregated with the perfume polymeric particle. Appellant argues that the insoluble perfume particles comprise anionic polymers, and that the cationic deposition

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polymers facilitate deposition of the perfume polymeric particles. In addition, the cationic deposition polymer is not part of the perfume delivery system, but instead, interacts with the (anionic) perfume polymeric particle to deliver the perfume to the consumer surface (Brief, p. 6). These arguments are not persuasive for several reasons. Regarding "aggregation", this is a product-by-process limitation. Appellant has not argued its importance in distinguishing over the prior art. Appellant has made an aggregated composition and a comparative, non-aggregated composition (specification, pp. 41-42), but does not provide any comparative data. Regarding the roles of the cationic and anionic polymers as argued by appellant, this amounts to argument of intended use. The examiner notes that the claimed compositions can be made by following the teachings of the prior art, in conjunction with case law which holds that compositions comprising both of two disclosed ingredients are obvious where each is taught as being useful for the same purpose.

Appellant further argues that the EP does not mention cationic deposition polymers. This is not persuasive because the reference teaches that cationic polymers may be used in compositions comprising fragrance. Appellant has provided no evidence that two polymers are better than one, or that any improved deposition takes place in the presence of the cationic deposition polymer. Arguing that the reference does not explicitly teach the use of deposition polymers amounts to an argument of intended use.

Finally, appellant argues that the reference teaches away from the use of a cationic deposition polymer to increase perfume deposition. This is because the reference teaches the use of a polymer which is imprinted with an organoleptic

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substance to deposit perfume, and that synthesizing the polymer in the presence of the organoleptic substance allows the polymer to interact more strongly with the organoleptic substance if it is ever exposed to the organoleptic substance again. This is not persuasive because appellant has not provided any definitions of deposition polymers which would exclude such an imprinted polymer. Furthermore, as appellant notes, the cationic deposition polymer claimed by appellant and the imprinted cationic polymer of the prior art both serve the purpose of enhanced perfume deposition.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Primary Examiner
Art Unit 1751

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